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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/812,639
Filing Date: March 20, 2001
Appellant(s): LEVINE, MICHAEL R.

MAILED

SEP 15 2006

GROUP 3600

Allen M. Krass
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 1, 2006 appealing from the Office action mailed March 21, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is substantially correct. The brief fails to include, within the summary for independent claim 9 all the distinct features and limitations contained in the body of this claim. However, the examiner recognizes that the claim 9 includes the following limitations in addition to those recited in the summary:

providing the healthcare user access to a web site hosted by the intermediary on a computer network (page 5, lines 8-19);

identifying the healthcare user accessing the healthcare website (page 5, line 19 to page 6, line 2; item 140 in Figure 2);

providing the identified healthcare user access to a web page containing healthcare providers contracting with the intermediary (page 8, lines 3-5);

selecting by the healthcare user a healthcare provider from the contracting healthcare providers (page 8, lines 9-10);

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receiving by the healthcare user the predetermined healthcare service from the selected healthcare provider (page 8, lines 9-10);

charging the fee for receiving the predetermined healthcare service using the healthcare credit card (page 8, lines 8-11);

subsequently paying the selected healthcare provider by the intermediary according to the contract between the healthcare provider and the intermediary for the healthcare service charged to the healthcare credit card (page 8, lines 11-16); and

subsequently paying the intermediary by the healthcare user according to the contract between the healthcare user and the intermediary as payment for the healthcare service rendered by the selected healthcare provider (page 8, line 17-page 9, line 2).

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Volz, David, "Alternative care; Membership network offers uninsured a choice", Modern Physician, August 1999, pp. 40.

Anonymous, "The issuers of health-care cards sense an era of healthy growth", Credit Card News, Chicago, IL, 6/15/1994, p.5 (referred to as "Health care cards" in the body of the Office Actions)

Anonymous, "Information Available at the website of SimpleCare", presumably www.simplecare.com on 9/27/1999 (referred to as "SimpleCare" in the body of the Office Action)

Anonymous, "M&T Bank NA launches its 5th cobranded credit card and 3rd supermarket card in 10 months", Card Fax, Vol. 96, No. 27, p.2, February 12, 1996, from Dialog File 9

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(Business & Industry), Accession No. 0850421 Supplier No. 23426401 (referred to as

"M&T" in the Office Action)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-3 and 5-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Volz in view of Anonymous, "The issuers of health-care cards sense an era of healthy growth" (hereinafter Health care cards) and of information available at the web site of SimpleCare (hereinafter Simplecare) and in even further view of "M&T Bank NA launches its 5th cobranded credit card and 3rd supermarket" published on February 12, 1996 (hereinafter referred to as M&T).

As to claims 2, 5, 6, 9 and 12, Volz discloses a method of payment for a Health care cards service (see abstract), said method comprising the steps of:

contracting by an intermediary with a healthcare provider, wherein the healthcare provider agrees to perform services for a healthcare user contracting with the intermediary and receive a fee for such services discounted relative to fees charged by the Health care cards provider to other parties (page 1; paragraph 3 and page 2);

receiving by the healthcare user a healthcare service from the Health care cards provider (page 2).

Volz does not explicitly disclose contracting between a healthcare user and the intermediary for the healthcare user to pay the healthcare provider when the healthcare service is performed with a healthcare credit card issued by the intermediary; charging the fee for the healthcare service using the healthcare credit card; subsequently paying the healthcare provider by the intermediary according to the contract between the healthcare provider and the intermediary for the healthcare service charged to the healthcare credit card; and subsequently paying the intermediary by the healthcare user according to the contract between the Healthcare cards user.

However, Health care cards discloses contracting between a healthcare user and the intermediary for the healthcare user to pay the healthcare provider when the Health care cards service is performed with a healthcare credit card issued by the intermediary (i.e. financing plans)(see abstract); charging the fee for the healthcare service using the healthcare credit card (page 1); subsequently paying the healthcare provider by the intermediary according to the contract between the healthcare provider and the intermediary for the healthcare service charged to the healthcare credit card at a discounted rate (Pages 1; Paragraphs 1 (Abstract) and 4) and Pages 2 and 3); and subsequently paying the intermediary by the healthcare user according to the contract between the Health care cards user and the intermediary as payment for the healthcare service rendered by the selected healthcare provider (pages 1-3). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations for the motivation of allowing patients to pay for patient owed portions of medical bills without tying up credit lines on their general purpose cards (see abstract).

Volz and Health care cards do not explicitly disclose providing the healthcare user access to a website hosted by the intermediary on a computer network; identifying the healthcare user accessing the healthcare website; providing the identified healthcare user access to a web page containing healthcare providers contracting with the intermediary; and selecting by the healthcare user a healthcare provider from the contracting healthcare providers.

However, Simplecare discloses providing the healthcare user access to a website hosted by the intermediary on a computer network (page 1); identifying the healthcare user accessing the healthcare website (pages 1-9); providing the identified healthcare user access to a web page containing healthcare providers contracting with the intermediary (pages 6-9); and selecting by the healthcare user a healthcare provider from the contracting healthcare providers (pages 6-9). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Simplecare within Volz and Health care cards for the motivation of accessing a network of Health care cards providers for fees where the system reduces administrative costs associated with medical care and passes the savings to consumers in the form of reduced fees (pages 1-2).

As to claims 8 and 11, Volz does not explicitly disclose a method as set forth in claims 5 and 9 including the step of billing the healthcare user by the intermediary for the Health care

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cards service performed by the healthcare service provider, after said step of paying the Health care cards provider.

However, Health care cards discloses the step of billing the healthcare user by the intermediary for the healthcare service performed by the healthcare service provider, after said step of paying the healthcare provider (pages 1-3). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by healthcare within Volz for the motivation of allowing patients to pay for patient owed portions of medical bills without tying up credit lines on their general purpose cards (see abstract).

As to claims 3, 7 and 10, Volz and Health care cards do not explicitly disclose wherein the computer network is the Internet.

However, Simplecare discloses wherein the computer network is the Internet (page 1). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Simplecare within Volz and Health care cards for the motivation of accessing a network of healthcare providers for fees where the system reduces administrative costs associated with medical care and passes the savings to consumers in the form of reduced fees (pages 1-2).

Claims 5, 9 and 12 recite that a healthcare user charges goods or services, especially health care goods and services, and these services are offered to the user by the provider at a discount and by the user having the credit card they are able to charge the goods/services to the credit card and the credit card enables them to get the goods/services they are purchasing at a discount.

This concept is taught by both by Health care cards (Page 3, Paragraph 1) and M&T (see Abstract). At the time of the invention, it would have been obvious for one of ordinary skill in the art to have used the concept taught by Health care cards and M& T to have modified the teachings of Volz with the motivation of having a means whereby a user could charge healthcare goods and services to a credit card and also receive discounts on those purchases using the same card, as recited in Health care cards (Page 3, Paragraph 1) and M&T (Abstract).

(10) Response to Argument

(1) Applicants make a piecemeal argument against each reference and claim, specifically stating that Volz and Health care cards both disclose payment systems which are incompatible with each other. They also state that the SimpleCare does not relate to the type of system in which an intermediary pays the healthcare provider for the services performed and simply provides a network in which member providers agree to provide services at standardized fees.

To respond to this argument the examiner would like to provide a brief summary of why each reference was used in the rejection.

The Volz reference was used to show the concept of a health membership network in which a patient or user can receive discounted fees with a group of healthcare providers. The Health care cards reference teaches the use of an intermediary which will finance the costs (i.e. where the intermediaries pay the costs for the users and then permit the users to pay the intermediary at a later time than the time the services are purchased or procured by the user) of healthcare services purchased and/or procured by the users. Therefore, at the time of the invention, one of ordinary skill in the art could have combined the teachings of Volz and Health

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care cards to create a system wherein there exists a health membership network in which a patient or user can receive discounted fees when they visit a group of healthcare providers. By combining the teachings of Health care cards with that of Volz (motivation is set forth in the rejections of the claims above), the user would have a means of paying for these discounted services taught in Volz in which the user would not have to pay the fees right away but the fees would be paid by the intermediary discloses in Health care cards. Simplecare is used to show that the business methods taught by the combined teachings of Volz in view of Healthcare can be conducted over a computer network (Internet) (motivation is set forth in the rejection of the claims above). Health care cards and M& T are used to show that it is well known in the health care financing industry that a user can have an intermediary finance the services that they have purchased and procured yet still receive discounts on these goods or services.

(2) The applicants argue that this rejection should be withdrawn because the systems of Volz and Health-Care are “totally incompatible with one another” (See: Applicant’s arguments of April 21, 2005, Page 8, Paragraph 3). However, as noted in Section (1), above, the applicants are only making assertions that these systems are incompatible and it does not appear that they have provided any elaborate reasons to support this assertion or provided any affidavits. Moreover, the examiner would like to point out that Claims 2-12 have been rejected over Volz in view of both Health care cards and SimpleCare and M& T and these four collective references teach all the claimed limitations in Claims 2-12 and motivation exists, within the text of the references to combine the teachings of these three references. The motivation for combining these references is clearly set forth in the rejection of these claims. Moreover, the applicants have only argued

against Volz and Health care cards while the 35 USC 103 rejection is over Volz, Health care cards, SimpleCare and M & T.

(3) The applicants argue that the prior art of record in this case does not disclose a method which involves a user charging healthcare goods or services to a credit card and receiving discounts in the fees that the healthcare provider charges for these services.

However, Health care cards (Page 3, Paragraph 1) and M&T (Abstract) teach this feature.

Moreover, the examiner has clearly set forth motivation for combining these teachings with the teachings of Volz.

(4) In addition, each claim element recited by Appellant was meticulously matched with specific portions of the prior art that either directly taught or made obvious each and every limitation recited within the claim. As such, the Examiner respectfully submits that the issue at hand is not a lack of a response from the Examiner with regard to the rationale for combining references (which is clearly unsupported by the prosecution history of the instant application.) Rather, what appears to be lacking is a pointing out by Appellant of some patentable distinction of the claimed invention over the citations and combinations manifest in the prior of record, and reiterated by the Examiner.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

Vivek Koppikar
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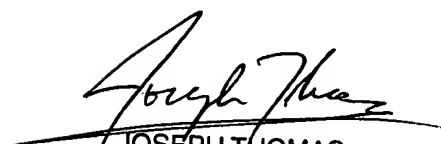
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